



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-80,774-01

EX PARTE ESMAEL VILLASANA, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W 401-82937-2012 IN THE 401ST DISTRICT COURT
FROM COLLIN COUNTY

Per curiam.

ORDER

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant pleaded guilty to evading arrest and was sentenced to six years' imprisonment. He did not appeal his conviction.

Applicant contends that his plea was induced by a promise of pre-sentencing jail time credit, and that the agreement was breached when he was not credited with all the time he was promised. The record contains conflicting information regarding how much credit Applicant believed he would be getting in exchange for his plea of guilty. Applicant has alleged facts that, if true, might entitle him to relief. In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), the trial court is the appropriate forum for findings

of fact. The trial court shall obtain an affidavit from Applicant's trial counsel, stating specifically whether the granting of a specific amount of time credit was an affirmative element of the plea agreement in this case. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d). In the appropriate case, the trial court may rely on its personal recollection. *Id.*

If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall appoint an attorney to represent Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall make findings of fact and conclusions of law as to whether a specific amount of time credit was an affirmative element of Applicant's plea agreement, and if so, what that amount was, regardless of whether or not Applicant could actually be granted that amount of credit for pre-sentencing jail time. The trial court shall make findings of fact as to whether Applicant's plea was knowingly and voluntarily entered, and as to whether or not the plea agreement was breached. The trial court shall supplement the habeas record with any documents or transcripts of the plea proceedings which support the court's findings of fact. The trial court shall also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief.

This application will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 90 days of this order. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall be forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.